



April 24, 2001

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney
County Of Bexar
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2001-1612

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 146376.

The Bexar County District Attorney's Office (the "district attorney") received a request for information relating to an investigation of an automobile accident. You claim that the requested information is excepted from disclosure under section 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.¹

Section 552.108, the "law enforcement exception," provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(3) it is information that:

¹You also point out that "[t]his is the second request from the same requester [sic] with respect to information in this particular file" and that the first request became the subject of Open Records Letter No. 2001-0363 (2001). But we do not understand the district attorney to claim that our prior ruling permits the withholding at this time of any of the information that the present request encompasses. See Gov't Code § 552.301(a); Open Records Decision No. 673 (2001).

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(3). A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply the explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov't Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You inform this office that the requested information relates to a pending criminal prosecution. You state that "[t]he information requested includes records prepared by a prosecutor in anticipation of or in the course of preparing for criminal litigation or information that reflects a prosecutor's mental impressions or legal reasoning." Based on these representations and our review of the submitted information, we conclude that the district attorney may withhold the information from the requestor under section 552.108(a)(3).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor

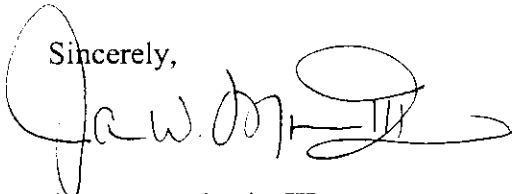
governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a large, stylized initial "J" and "M".

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/rr

Ref: ID# 146376

Encl: Submitted documents

cc: Mr. Charles L. Smith, Esq.
Jenkins & Gilchrist
1400 Frost Bank Tower
100 West Houston Street
San Antonio, Texas 78205
(w/o enclosures)